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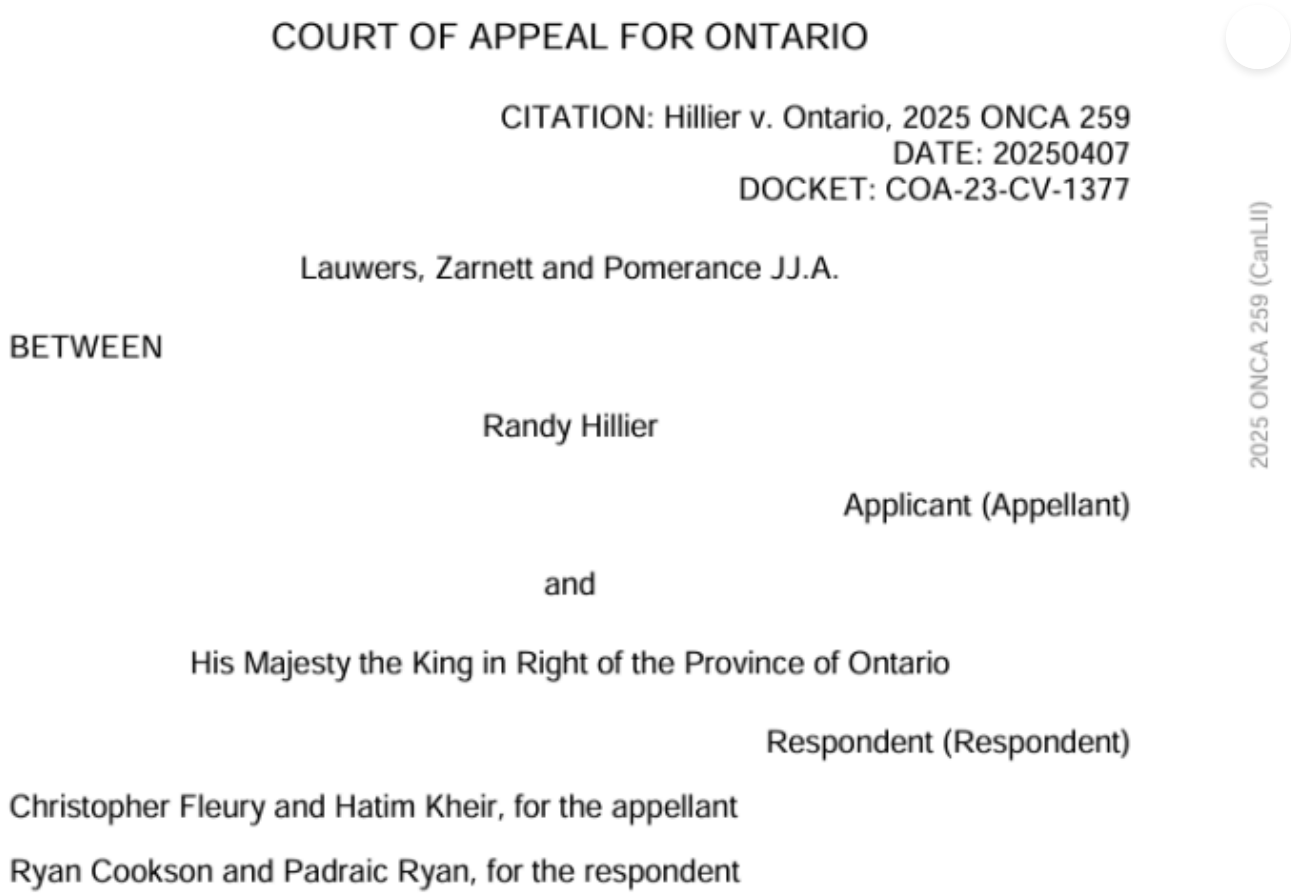
APRIL 17, 2025 BY RONNIE

A Look At The Hillier Ruling: Appeal Overturns Ban On Public Gatherings



COURT OF APPEAL FOR ONTARIO

CITATION: Hillier v. Ontario, 2025 ONCA 259
DATE: 20250407
DOCKET: COA-23-CV-1377

Lauwers, Zarnett and Pomerance JJ.A.

BETWEEN

Randy Hillier

Applicant (Appellant)

and

His Majesty the King in Right of the Province of Ontario

Respondent (Respondent)

Christopher Fleury and Hatim Kheir, for the appellant

Ryan Cookson and Padraic Ryan, for the respondent

2025 ONCA 259 (CanLII)

Nice to cover a win, rare as they may be.

Last week, the Court of Appeal for Ontario overturned a ruling which found “stay-at-home” orders from 2021 to be justified, even if they did breach the Charter. The Application came

from former Ontario MPP, Randy Hillier. This comes 4 years after Doug Ford effectively placed the entire Province under house arrest.

In the end, the Court of Appeal boiled it down to a simple 2-part question:

> [47] The issues raised in this case are as follows:
>
> (a) did the Gathering Restrictions ***violate Mr. Hillier's freedom of peaceful assembly as provided for in section 2(c)*** of the Charter?
>
> (b) if yes, is the violation ***justified under s. 1 of the Charter***?

The Appellate Court indeed found that the orders did in fact amount to a breach of rights that couldn't be justified. In particular, the way *some* gatherings could be accommodated, but not others, was very revealing.

> [7] Despite these cautions, I conclude that the gathering limits at issue in this case were not demonstrably justified under s. 1 of the Charter. This case is materially different from Trinity Bible Chapel. ***First, this case concerns an absolute, rather than partial ban. Second, while Ontario tailored restrictions on religious gatherings to facilitate freedom of religion, no such tailoring was performed to facilitate the right to peacefully assemble***. The evidence discloses that Ontario ***failed to consider the impact of the gathering limits on s. 2(c) of the Charter***. The pandemic posed significant challenges for Ontario, but the Constitution does not fade from view in times of crisis.

Various public officials "claimed" that there has been all kinds of consultations done to ensure protection of rights, or at least some of them. This seems designed more to protect themselves from future challenges, than any sincere effort. Freedom of assembly didn't make the list, for some reason.

Now, things should have been straightforward. However, Government lawyers have been quite good at convincing Judges that suspending rights (on the flimsiest of bases). "Trust me, Bro" has been the way it's worked for a while.

While the Appeal seemed to be a long shot, there were at least 2 things which helped. First, several cases the Government relied on weren't entirely helpful. Second, creating multiple "tiers" of protected rights involved some mental gymnastics to explain.

Ontario Superior Court Dismisses Application

CITATION: Hillier v. His Majesty the King in Right of The Province of Ontario, 2023 ONSC 6611
COURT FILE NO.: CV-22-00682682-0000
DATE: 20231122

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
RANDY HILLIER	)	
Applicant	)	*Sayeh Hassan, Chris Fleury, Henna Parmar* and *Darren Leung*, for the Applicant
– and –	)	
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO	)	*Ryan Cookson* and *Padraic Ryan*, for the Respondent
Respondent	)	

2023 ONSC 6611 (CanLII)

From reading the original ruling, a familiar issue comes up.

> [72] ***Mr. Hillier concedes that the Gathering Restrictions were enacted to address a pressing and substantial concern, namely COVID-19. This included the pressing need to reduce the transmission of COVID-19, and to reduce hospitalization and ICU admissions. The Court of Appeal in Trinity Bible found COVID-19 was a pressing and substantial concern in the spring of 2021***. The Court of Appeal further accepted the motion judge's finding that the "the objective of the religious gathering restrictions was to reduce COVID-19 transmission, hospitalization and death, and to mitigate threats to the integrity of the healthcare system":

> [73] ***As reviewed earlier in this decision, these were factually the same considerations before me. The rising caseloads and mounting deaths required government action. Without government intervention and restrictions, many more***

> ***people would die***. In Ontario, the pressing and substantial concern was heightened because its healthcare system, particularly the hospital sector, was close to its breaking point. Not only were those who suffered from COVID-19 at risk, but so were all the Ontarians who might need acute hospital care. There was no immediate fix to this long-standing structural problem, aside from doing all that was possible to reduce the spread of COVID-19. In short, it is hard to envision a more pressing and substantial objective.

> [74] Accordingly, while I would have come to the same conclusion, ***there is no factual or legal basis for me to depart from the finding in Trinity Bible***, that the Gathering Regulations were enacted to address the pressing and substantial objective of reducing the transmission of COVID-19.

The ruling, like so many, seems to "defer to the experts" without posing any real challenge. It this the best approach?

This may be a purist stance to take. But playing along with the Government narrative of there being a "pressing and substantial concern", dooms many of these cases to fail. Under the Oakes Test, virtually any infringement of rights can be justified if it's deemed to be:

(a) Pressing and Substantial Objective
(b) Rational Connection
(c) Minimal Impairment

By conceding the first (and really, the second) parts here, litigants are reduced to arguing that the impairment is not minimal, and is excessive.

In this instance though, tying this to Trinity Bible Chapel hurt initially, although it was ultimately useful later on. Justice Callaghan ruled that the outdoor assemblies could be restricted, much like a church could. That led to the Application being dismissed.

But there was one important difference: religious gatherings were *restricted*, while political gatherings were *prohibited* outright. That would change everything on Appeal.

As an aside, this ruling was cited by the Alberta King's Bench in May 2024. Club Ménage, a polygamy group, challenged Land Use By-Laws which prohibited certain type of gatherings. In this context, it appears to be a swinger's club.

Court Of Appeal Overturns Lower Court Ruling

Here's how the Hillier Appeal was framed. It was over 2 questions of law. The Court seemed to focus almost exclusively on the second, while side-stepping the first.

> The Applicant raises two issues in this Appeal, namely:
> 1) that the Application Judge ***erred in his application of the minimal impairment*** branch of the test cited in R v Oakes; and
> 2) that the Application Judge erred in upholding government action that ***created a constitutionally impermissible hierarchy of rights***.

One of the cases, interestingly enough, that Hillier relied on in his Appeal was Ontario v. Trinity Bible Chapel et al. This matters, because even when Courts found "restrictions" to be justified, they never entirely banned religious gatherings. They were just made very inconvenient.

> [155] Finally, it is important to note that, throughout the pandemic, ***religious gathering limits were carefully tailored to reflect evolving circumstances, new scientific evidence, and changing levels of risk. Ontario never completely banned religious gatherings***. Even when risk was at its highest, and public health at its most precarious, religious institutions were permitted to have upwards of ten persons together, to facilitate virtual or drive-in services.

> [167]… Yet, it remains the fact that, ***despite the claimants' characterization as such, there was never a complete ban on religious gatherings or religious activity. It was always open to the churches to deliver services to congregants, albeit in a less than optimal fashion***. Gathering limits imposed a significant burden on religious activity, but they did not prevent it from occurring.

By this logic, how then could Ford justify a stay-at-home order which permitted one type of protected activity (religious in nature), while outright banning another (political assembly)? While Trinity is often seen as a bad ruling, there was something good within it.

It stands to reason that public assembly *could* be permitted, with similar restrictions. But the reason it was not: political gatherings are a potential threat to Government, while religious gatherings aren't.

58. Mr. Hillier's third argument on appeal is that the application judge "erred in law in upholding a hierarchy of rights established by Ontario" through the Gathering Limits. This is how Mr. Hillier describes the fact that the Gathering Limits prohibited outdoor gatherings for political purposes while allowing certain religious gatherings.

59. This is a new argument on appeal which this Court should not entertain. As a general rule, appellate courts will not entertain new issues on appeal. The application judge's reasons contained no analysis of a "hierarchy of rights" because Mr. Hillier did not make this argument below, and therefore this Court would have to consider this argument as a matter of first impression. There is no exception to the rule against new arguments on appeal for constitutional claims.

The Government lawyers complained that "hierarchy of rights" was a new issue on Appeal, and should not be considered. That said, they concede that Hillier *had* referred to other types of activities, such as religion, sports events, and shopping. They then go on to argue (essentially) that any sort of activities can be restricted if it is deemed to be necessary.

In other words, hypocrisy had been addressed before, even if "hierarchy of rights" was a new term.

Hillier wasn't really introducing a brand new issue, but making better arguments.

Sanity did prevail at the Court of Appeal.

Timeline Of Major Events In Case

June 13th, 2022: Hillier files Notice of Application in Toronto.

October 6th, 2022: Hillier files Notice of Constitutional Question.

May 4th, 2023: Hillier is questioned during discovery.

May 5th, 2023: Joel Kettner is questioned during discovery.

May 16th, 2023: Kevin Bardosh is questioned during discovery.

June 7th, 2023: Hillier files Factum (arguments) for hearing.

July 7th, 2023: Ontario files Responding Factum.

July 21st, 2023: Hillier's Reply Factum comes in.

July 27th/28th, 2023: Application is heard in Provincial Court.

September 12th, 2023: Supplementary submissions are filed after the fact.

November 13th, 2023: More supplementary submissions are filed.

November 22nd, 2023: Ontario Superior Court dismisses the Application.

February 26th, 2024: Appellant's (Hillier's) Factum is filed.

May 23rd, 2024: Respondent's (Government's) Factum is filed.

September 19th, 2024: Appeal is heard in Toronto.

April 7th, 2025: Ontario Court of Appeal overturns ONSC decision.

With all this in mind, some perspective is needed. Doug-The-Thug is still in power, and in fact, was re-elected in 2022 and 2025. He's faced no real consequences for doing any of this. Hopefully though, there will be more pushback the next time such a tyrant wants to impose martial law.

ONSC COURT DOCUMENTS:
(1) Hillier Notice Of Application
(2) Hillier Notice Of Constitutional Question
(3) Hillier Transcript Of Hillier
(4) Hillier Transcript Of Bardosh
(5) Hillier Transcript Of Kettner
(6) Hillier Factum

(7) Hillier Responding Factum

(8) Hillier Reply Factum

(9) https://www.canlii.org/en/on/onsc/doc/2023/2023onsc6611/2023onsc6611.html

ONCA COURT DOCUMENTS:

(1) HIllier APPEAL Appellant Factum

(2) HIllier APPEAL Respondent Factum

(3) https://www.canlii.org/en/on/onca/doc/2025/2025onca259/2025onca259.html

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One Reply to “A Look At The Hillier Ruling: Appeal Overturns Ban On Public Gatherings”

susan van weert

APRIL 19, 2025 AT 3:37 AM

Thankyou Patriot